

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

PETER H. TAKEDA,	)	CIVIL NO. 04-00281 JMS/LEK
	)	
Petitioner,	)	ORDER DENYING CERTIFICATE
	)	OF APPEALABILITY
vs.	)	
	)	
FRANK LUNA, Warden, Florence	)	
Correction Facility; and MARK	)	
BENNETT, Attorney General of the	)	
State of Hawaii,	)	
	)	
Respondents.	)	
	)	

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Peter Takeda filed a *pro se* petition for writ of habeas corpus challenging his conviction in Hawaii state court. On April 4, 2005, Magistrate Judge Leslie Kobayashi issued Findings and Recommendation (F&R) denying Takeda's petition on the merits. This court issued an order adopting the Magistrate Judge's F&R on September 8, 2005 (September 8 Order). Petitioner now seeks a Certificate of Appealability (COA) from the September 8 Order. After considering the briefs submitted by Takeda and the respondents, the court DENIES the COA.

## DISCUSSION

A petitioner must obtain a COA to appeal a final order denying a habeas corpus petition. 28 U.S.C. § 2253(c)(1)(A). The court may issue a COA only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When, as here, a petition is denied on the merits of the claim, the petitioner is required to show that reasonable jurists could debate whether the issues should have been resolved differently or are “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)).

Takeda presented three arguments in his petition. He argued that: (1) the trial court violated his constitutional right to due process by failing to give the jury a specific unanimity instruction; (2) the inclusion of two complainants in the jury instructions who did not testify at trial violated his constitutional right to confront his accusers; and (3) testimony at trial and statements made in the prosecution’s closing argument violated his constitutional right to due process and a fair trial.<sup>1</sup> The court found that each of Takeda’s arguments was without merit

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<sup>1</sup> Takeda argues in his brief in support of the COA that the state did not present evidence at trial that he possessed the level of intent required to support a charge of attempted first degree murder. Takeda did not make this argument in his petition and therefore the court does not address it.

and denied the petition. The court finds that reasonable jurists could not debate that Takeda has not made a substantial showing of the denial of a constitutional right.

Takeda presents a fourth ground for appeal in addition to the three arguments contained in his petition. Takeda argues that the court abdicated its decisionmaking responsibility when it “adopted” the Magistrate Judge’s F&R. The court reviewed the F&R de novo, however, and issued a twenty-page order discussing each of Takeda’s arguments in detail. The court finds that reasonable jurists could not debate that Takeda has not made a substantial showing that the court’s order adopting the F&R violated a constitutional right.

For the reasons stated herein, the COA is DENIED.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii February 14, 2006.



A handwritten signature in black ink that reads "J. Michael Seabright".  
J. Michael Seabright  
United States District Judge

*Takeda v. Luna et al*, Civ. No. 04-00281 JMS/LEK, Order Denying Certificate of Appealability